IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1235 of 2006
to
SPECIAL CRIMINAL APPLICATION No. 1238 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAYANABEN ARVINDBHAI PATEL & ANR
Versus
THE STATE OF GUJARAT & ANR

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Appearance :
MR GC RAI for Applicants
MR AY KOGJE APP for Respondent No.1
None for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 25/07/2006

ORAL JUDGMENT

1. Since all the matters, are of the like nature and similar questions have arisen, have been heard together and being decided accordingly.

2. In all the four petitions, against the applicants, Criminal Cases No.153/1999, 154/1999, 155/1999 and 156/1999 were instituted against respective applicants for the offence punishable under Section 160 of the Companies Act. In each of the above Criminal Summary Cases, the present applicants i.e. accused, in respective cases, admitted the offence and orders came to be passed by the learned Additional Chief Metropolitan Magistrate on 23.11.2005 and on 14.11.2005 in Criminal Case No.153/1999. In each of the cases, learned Metropolitan Magistrate came to the conclusion that as per the provisions of Section 162 of the Companies Act for the breach of Section

220(3), the accused concerned was punished to pay a fine of Rs.5/- per day for the delay in filing balance-sheet as required under the Companies Act. In Criminal Case No.153/1999, there was delay of 2936 days; in Criminal Case No.156/1999, there was delay of 2924 days; in Criminal Case No.155/1999, there was delay of 2950 days, while in Criminal Case No.154/1999, there was delay of 2559 days in submitting a balance-sheet. It appears that some petitions four in numbers, bearing Special Criminal Applications No.1884, 1888, 1889 and 1890 of 2005, came to be filed by the present applicants before this Court, wherein by para-5 in judgment dated 12.01.2006, this Court was pleased to direct the applicants to file appeal against the sentence with delay condonation applications and the warrants issued against the applicants were quashed. It was the grievance of the applicants that they were not given certified copies of the judgment and orders delivered in above said four Criminal Cases

which were given to them by intervention of Registry of this Court.

3. All the applicants preferred Criminal Revision Applications against the orders passed by the learned Additional Metropolitan Magistrate being Criminal Revision Applications No.28/2006, 29/2006, 30/2006 and 31/2006 in the Court of learned City Civil Judge, Ahmedabad, but the learned City Civil Judge, Ahmedabad, dismissed all the four Criminal Revision Applications on the ground that the accused i.e. present applicants were fined in aforesaid matters on their admitting the offence and the orders passed were not against the established law and, therefore, the Criminal Revision Applications came to be dismissed, and hence these four Special Criminal Applications are filed to modify the orders passed by learned Additional Metropolitan Magistrate sentencing accused in four Criminal Cases to pay fine of Rs.5/- per day till compliance as per the provisions of the Companies Act.

4. In all these four applications, learned advocate Mr.G.C.Rai for the applicants and learned APP Mr.A.Y.Kogje for the respondent No.1 – State of Gujarat were heard.

5. Mainly it is stated by the learned advocate for the applicants that the applicants appeared before the Court and, thereafter, the Metropolitan Magistrate Court sometimes was closed for non-availability of the Judges and sometimes as the accused No.4 was not served with the summons, sometimes the Courts were not functioned due to non-availability of the Judges and due to earthquake, the Courts proceedings were closed in the original Courts compound and for longer time the Court was closed and, thereafter, was shifted to Meghaninagar in 2004 and, thereafter, ultimately, plea of the applicants came to be recorded and, thereafter again, the Court was transferred to new building and the Court was not actively proceeded with the matters for about 4-5 years, with the result, the applicants

were victims of heavy fine. Learned advocates for the applicants urges that the quantum of the fine is required to be reduced on this ground because it was not within the hands of the applicants to plead the case of guilty or otherwise earlier. It is also submitted that on the same day on which the plea came to be recorded in these four Criminal Cases, in other two complaints as well of similar nature, plea was recorded and the matter was disposed of by the learned Metropolitan Magistrate Court by imposing fine of Rs.1/- per day in Criminal Cases No.703/1998 and 704/1998 and there is violation of Article 14 of the Constitution of India. It is further submitted that the applicants are victimized by the harsh order of the Metropolitan Magistrate Court and when different treatment is given to the other accused, order of directing to pay a fine of Rs.5/- per day is passed in these four matters. It is also submitted that the applicants were not heard in respect of the order awarding fine of

Rs.5/- per day. It is, therefore, requested and submitted that directions be issued to set aside the judgment and orders passed by the Additional Chief Metropolitan Magistrate Court in those four Criminal Cases as confirmed in above mentioned four Criminal Revision Applications.

6. Having heard learned advocate for the applicants and learned APP for the respondent No.1 – State of Gujarat, it appears that those four Criminal Cases came to be launched against the applicants because of not filing the balance-sheet or annual report. These breaches are made punishable under Section 162 of the Companies Act. Section 162 is as under:-

> ***"162****. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred] rupees for every day during which the*

default continues.

(2) For the purposes of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act."

7.The grievance which is expressed in these petitions is, in short, in respect of quantum of fine imposed upon the accused of each four Criminal Cases. It is pertinent to note that in all those Criminal Cases, the applicants being accused admitted the offence and plea was recorded voluntarily. It is not the grievance of the applicants even in these petitions that they did not commit the breach and plea of guilty came to be recorded. The accusation in the complaint was that the accused being Limited Company, was required to hold its Annual General Meeting in financial year from 31.03.1998 by 30.09.1998 and till that date, the accused were to

submit Annual Returns in the prescribed form in pursuance of the provisions of the Companies Act. This accusation came to be admitted by the applicants. Now as seen above, the provisions of Section 162 empowers the concerned Magistrate to award fine to the extent of Rs.500/- for every day during which the default continues. Default in this case appears to be of filing of Annual Report. Learned Magistrate exercised his jurisdiction and punished the applicants with a fine of Rs.5/- every day during which the default continues.

7. These petitions are preferred under Articles 226 and 227 of the Constitution of India. However, this Court can examine the matters within the scope of Articles 226 and 227 of the Constitution of India. As what is, in fact, challenged is, the orders passed by two Courts below.

8. What clearly appears from the record is that the applicants continued defaulting and,

therefore, the amount of fine awarded by the learned Metropolitan Magistrate appears to be huge and harsh to the applicants. Had the compliance been made earlier especially when the accusation is admitted, the applicants could have saved themselves from paying more amount of fine, for which the grievance is expressed. The continuance of default, which invites punishment of fine per day till compliance, has no relevance at all with the facts that whether the Courts were functioning or not functioning or whether the plea could be recorded lately or that the circumstances were beyond the control of the applicants. The compliance as envisaged by Section 162 of the Companies Act to intercept continuance of default could have been made by the applicants to pay the amount of lessor fine. Likewise, in criminal matters, it is futile to compare a set of one fact with the other and conclusion arrived at from particulars of a set of facts. One criminal case in which conclusion arrived at on the

facts of the said case, cannot be a precedent for the other, so as to violate the Article 14 of the Constitution of India as has been vehemently pleaded in the petitions as well as in the submissions.

9. The scope of Articles 226 and 227 of the Constitution of India is well defined. Even wrong decisions of the Courts and Tribunals without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India. This jurisdiction is conferred to limited extent to see that an inferior Court or a Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law.

10. While in the present case, the facts are crystal clear that on admitting the offence, the learned Magistrate passed the orders of punishment perfectly within the scope of Section 162 of the Companies Act for which he

is authorised to pass. The Criminal Revision Applications preferred by the applicants also came to be dismissed on the ground that the orders impugned were neither illegal nor improper, and in these circumstances, no relief can be given to the present applicants on the ground that there is violation of Article 14 of the Constitution of India for the above grounds, and that the amount of fine is to harsh in the circumstances. On the contrary, within the scope of Articles 226 and 227 of the Constitution of India, this Court has no jurisdiction to interfere in the matters of like nature.

11. In above view of the reasons stated, all Special Criminal Applications No.1235/2006, 1236/2006, 1237/2006 and 1238/2006 stand dismissed summarily.

[J. R. VORA,J.]

(vijay)